



Bail Slip

The Appellant/Accused namely V.Santhamurthy was released on bail as per order of this Court dated 25.08.2011 and made in MP(MD)No.1 of 2011 in Crl.A.(MD)No.253 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.253 of 2011

V.Santhamurthy

... Appellant

Vs

State through the Inspector of Police,
Sirkali Police Station,
Nagapattinam District in Cr.No.704 of 2009. ... Respondent

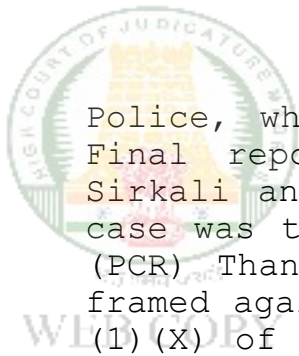
PRAYER: Appeal filed under Section 374 of Criminal Procedure Code, to admit this appeal on file and call for the records from the learned I Additional District and Sessions Judge (PCR) Thanjavur and set aside the Judgment of learned I Additional District and Sessions Judge, (PCR) Thanjavur in S.C.No.20 of 2011, dated 10.08.2011 by allowing this appeal.

For Appellant	: Mr.S.Ravi
For Respondent	: Mrs.S.Bharathi
	Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 3 (1)(X) of the SC/ST Act and 506(ii) of IPC and sentenced to one year rigorous imprisonment for each offence and levied with fine, vide Judgment dated 10.08.2011 in S.C.No.20 of 2011 on the file of the First Additional Sessions Judge (PCR), Thanjavur.

2.The prosecution case is that on 20.08.2009, at about 12.30 noon, a Panchayat was convened by P.W.1-Minu. The purpose for convening the Panchayat was to settle the claim of P.W.7-Kannan against the appellant Santhamurthy. According to Kannan, Santhamurthy owed him a sum of Rs.1,40,000/-. Kannan-P.W.7 moved the police authorities but it was in vain. In the Panchayat, the appellant refused to abide by the instructions to settle the claim and instead abused P.W.1 by referring to his community. It is not in dispute that P.W.1-Minu belongs to a notified scheduled caste. In this regard, P.W.1 lodged Ex.P1-Complaint before the Sirkali Police Station leading to registration of Ex.P5-FIR in Crime No.704 of 2009 for the offences under Sections 294(b) and 506(ii) of IPC and 3(1)(X) of SC/ST Act. Investigation was taken up by P.W.13 -Narayanasamy, Deputy Superintendent of



Police, who was appointed under Rule 7 of the SC/ST Rules, 1995. Final report came to be filed before the Judicial Magistrate, Sirkali and the case was committed vide P.R.C.No.20 of 2010. The case was taken up for trial by the First Additional Sessions Judge (PCR) Thanjavur in Special S.C.No.20 of 2011. Three charges were framed against the appellant. The first charge was under Section 3(1)(X) of the SC/ST Act, 1994, the second charge was under Section 294(b) of IPC and the third charge was under Section 506(ii) of IPC. The appellant denied the charges and claimed to be tried. The prosecution examined 13 witnesses and marked Ex.P1 to Ex.P7. On the side of the accused, no evidence was adduced. The learned trial Magistrate, acquitted the appellant for the offence under Section 294(b) of IPC but found him guilty under Section 3(1)(X) of the SC/ST Act and 506(ii) of IPC and sentenced him as mentioned above. Challenging the same, this appeal has been filed.

3.Heard the learned counsel on either side.

4.I carefully considered the rival contentions and perused the evidence on record.

5.In support of its case, the prosecution examined as many as eight eye witnesses. P.W.2 and P.W.4 did not support the charge under Section 3(1)(X) of the SC/ST Act. P.W.1, of-course, supports the prosecution case in toto. P.W.3 also supports the prosecution case. But then, this Court is not impressed by the said testimony, principally for the reason that P.W.3 and P.W.7 Kannan are relatives. As already pointed out, P.W.7-Kannan had a monetary claim against the appellant. In order to recover his money, P.W.7 had moved the police earlier. The Police had advised him that he must move the Civil Court. In order to shorten, the recovery process, P.W.7 had approached P.W.1. The Panchayat was convened. I am of the view that there cannot be any doubt about the convening of the Panchayat and the participation of the appellant in the Panchayat. Obviously, the appellant had refused to submit to the dictates that were issued to him in the Panchayat to settle the claim of Kannan. P.W.3-Srinivasan is residing in the same street as Kannan and belongs to his community. He is also a relative. Hence, he is bound to support Kannan. Therefore, the testimony of P.W.3 does not inspire my confidence. P.W.5 admittedly belongs to the community of P.W.1. P.W.6 also belongs to P.W.1's community. P.W.7 being the person who convened the Panchayat at the first instance, would obviously speak against the appellant. Therefore, P.W.7's testimony cannot in any way advance the prosecution case. P.W.8 hails from Rathanallur and he is called as Panchayat President. P.W.1 in his cross examination has stated that the Panchayat President did not attend the meeting. P.W.8 on the other hand claims that he attended the meeting at the invitation of P.W.7-Kannan. Since P.W.1 himself has stated that P.W.8 did not attend the meeting, I am of the view that no credence can be attached to

<https://hdsr.cerpt.com/hcrvices/> P.W.8.



6. Now the question that arises for consideration is whether the prosecution can be said to have established its case against the accused beyond reasonable doubt. The occurrence had taken place on 20.08.2009. But then, Ex.P5-FIR was registered only on 25.08.2009. Of-course, the learned Government Advocate (Crl.side) would claim that on the occurrence date itself, a complaint was lodged by P.W.1-Minu and that, the Police have issued CSR. This court wanted to know as to whether CSR was marked. It is seen that no such CSR was marked. However, the learned Government Advocate (Crl.side) would draw my attention to the evidence of P.W.11 who was the Sub Inspector of Police during the relevant time. P.W.11 said that on 20.08.2009, Minu appeared at around 06.00 p.m., and gave a written complaint and that he issued CSR No.483 of 2009. In the cross examination, it had been specifically suggested that P.W.11 was deposing falsehood. Of-course, the said suggestion was denied by P.W.1.

7. The evidence of P.W.11 does not carry any conviction and credibility. It is well known that Section 4 of the SC/ST Act states that a public servant who willfully neglects his duties required to be performed by him under this Act will be penalised. Therefore, when a complaint which prima facie discloses the commission of offence under Section SC/ST Act is submitted for registration, certainly, the Police would register the FIR straightaway and not issue a mere CSR. I had a look at Ex.P1 complaint. It was received by the Local Magistrate only on 25.08.2009. I get an impression that a few lines have been interpolated later. It is hand written and the last eight lines have been closely written without leaving much space in between. The occurrence had taken place on 20.08.2009 and the FIR was registered on 25.08.2009. The complaint as well as FIR reached the Court on 25.08.2009. In order to tide over the delay, it has been made to appear as if the complaint was lodged on 20.08.2009 itself. The endorsement of P.W.11 as if he issued CSR, has been very closely written towards the foot of Page No.2 of the complaint.

8. P.W.1 has no business to do any Katta Panchayat. Neither Kannan-P.W.7 nor the appellant Santhamurthy hail from the village of Radha Nallur. Kannan hails from Varusapattu, Sirkali. Santhamurthy hails from Thirumullaivasal. From the testimony of P.W.8, one can come to the conclusion that Minu has the habit of doing such Panchayat. If Kannan has any civil claim against Santhamurthy, the proper course open to him is only to move the Jurisdictional Civil Court. Of-course, he could have moved the legal service authority, so that, some mediation could have taken place. But then, P.W.1 is not a legally constituted authority. P.W.8 in his testimony has stated that P.W.1 has the habit of conducting such Panchayats. Rathanallur is a place where the Adhidravidar people are in a majority. It is simply impossible that ~~Services.com is hailing from some other place would go to~~ is hailing from some other place would go to



Radhanallur and in Radhanallur, he abused P.W.1 by referring to his community. The prosecution version is inherently improbable. In the cross examination of P.W.1, it has been specifically suggested that since Santhamurthy refused to abide by the directive issued in the Panchayat, in order to teach him a lesson, a false complaint has been given. As admitted by P.W.1 himself, after the Panchayat, he went to an Advocate's Office and the complaint itself was drafted by an advocate's clerk. The entire sequence of events clearly indicates that the provision of SC/ST Act have been grossly misused. The Court below erred in convicting the appellant. The impugned Judgement is set aside. This criminal appeal is allowed. The appellant is acquitted. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the appellant shall stand cancelled. No Costs.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The I Additional District and Sessions Judge(PCR)
Thanjavur
- 2.Do Thro'
The Principal Sessions Jduge, Thanjavur
3. The Inspector of Police,
Sirkali Police Station,
Nagapattinam District.
- 4.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai

copy to
The Section Officer
Criminal Section(Records)
Madurai Bench of Madras High Court,
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